

R.D. # 03-03  
Jersey City, N.J.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**CLEAN SWEEP BUILDING SERVICES, INC.<sup>1</sup>**

Employer

and

**GLORIA MARTINEZ, an Individual**

Petitioner

**CASE 22-RD-1365**

and

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 32B-32J, AFL-CIO**

Intervenor

**DECISION AND DIRECTION OF ELECTION**

**1. Introduction**

The petition, amended at the hearing, under Section 9(c) of the National Labor Relations Act, seeks to decertify the Intervenor as the representative of a unit of all full-time and regular part-time employees employed by the Employer at its St. Peter's College, Jersey City, New Jersey location. The Intervenor asserts that the petition should be dismissed because the Petitioner, Gloria Martinez, is a supervisor within the meaning of Section 2(11) of the Act. For the reasons described below, I find that Martinez is not a supervisor and that an election should be directed.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

Under Section 3(b) of the Act, I have the authority in this proceeding to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,<sup>2</sup> I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>4</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>2</sup> A letter brief filed by the Employer was fully considered. A brief filed by the Intervenor was received in the Regional Office after the June 4, 2003 due date, and was not considered. The Petitioner did not submit a brief.

<sup>3</sup> The Employer is engaged in providing contracted janitorial services, including the contract to perform such services at St. Peter's College's Jersey City, New Jersey facility, the only facility involved herein.

<sup>4</sup> Service Employees International Union, Local 32B-32J, AFL-CIO, herein called the Intervenor, was permitted to intervene based on its collective bargaining relationship with the Employer. In this regard, the record reveals that the Employer is a successor employer to Collins Building Services, for whose employees the Intervenor had been previously certified as the exclusive collective bargaining agent in May 2001 in Case No. 22-RC-12004. The parties stipulated, and I find,

**All full-time and regular part-time employees employed by the Employer at its St. Peter's College, Jersey City, New Jersey location, excluding all guards and supervisors as defined in the Act and all other employees.<sup>5</sup>**

The parties are in agreement that the appropriate unit in this matter should include all full-time and regular part-time employees employed by the Employer at its St. Peter's College, Jersey City, New Jersey location. Likewise, they agree that all guards and supervisors as defined in the Act should be excluded. At issue is the supervisory status of the Petitioner, Gloria Martinez, whom the Intervenor, contrary to the Employer and the Petitioner, asserts is a supervisor within the meaning of the Act. It appears that the Intervenor would contend that team leader Julio Mendez, who has the same duties and functions as the Petitioner, is also a supervisor within the meaning of the Act.

## **2. Facts**

The record reveals that the Employer provides janitorial service to various customers including St. Peter's College in Jersey City, New Jersey. The Employer's President, Henry Mendoza, testified that he has day to day responsibility for the Employer's business operations. Reporting to Mendoza are Dicente Orellana and Felix Boventub, both supervisors who oversee different locations. Boventub is the supervisor at the St. Peter's College location involved here. The parties apparently agree that Orellana and Boventub are supervisors and/or management personnel and not part of the unit. The Intervenor currently represents a unit of all employees

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that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

<sup>5</sup> The unit description is in accord with the stipulation of the parties which I find to be appropriate for purposes of collective bargaining. There are approximately 23 employees in the unit.

employed at the St. Peter's College location, excluding guards and supervisors as defined in the Act. The record reveals that both Petitioner Martinez and Julio Mendez are employed as team leaders at the St. Peter's College location.

The record reveals that team leaders do not possess the authority to hire, fire, transfer, layoff or recall employees, nor to recommend such actions. Further, there is no evidence that team leaders are involved in the hiring process by interviewing employees; recommend promotions or raises; or have authority to grant time off to employees. Team leaders do not schedule employees for work or determine their hours nor do they have authority to assign overtime, resolve employee grievances, evaluate employees' work performance or discipline employees.

The record further reveals that work assignments are generated by "higher management" and distributed by the team leaders. In this connection, team leaders distribute work assignments to the appropriate cleaners at the start of each shift. There is no evidence in the record that team leaders exercise independent judgment in this distribution function rather than merely conveying the assignments made by managers. The record reveals that team leaders, as other employees, report employee misconduct to management for consideration. It is undisputed that team leaders are obligated to report such misconduct when they become aware of it. There is no evidence that they make any recommendations as to disciplinary matters.

The record reveals that team leaders, like all other employees, share the same primary duties and terms and conditions of employment. The parties agree that team leaders work together with other unit employees and spend a majority of their work time performing the same physical tasks as all other unit employees, such as

vacuuming, sweeping and dusting as needed. Like other employees, they are paid on an hourly basis.

The only notable distinctions the record reveals between team leaders and other employees are their rate of pay<sup>6</sup> and their having keys to the office, as well as the fact that team leaders meet with management to receive instructions, which they in turn convey to other employees.

### 3. Analysis

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In *Providence Hospital*, 320 NLRB 717, 725 (1996), the Board held, "In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with 'genuine management prerogatives,' and 'straw bosses, lead men and set-up men' who are protected by the Act even though they perform 'minor supervisory duties.'" Id. at 724, citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-81 (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)). The legislative history instructs the Board not to construe supervisory status too broadly, because an employee who is deemed a supervisor loses the protection of the Act. See *Providence Hospital*, above at 725; *Warner Co. v. NLRB*, 365 F. 2d 435, 437 (3rd Cir. 1966), cited in *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1073 (1985). While the

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<sup>6</sup> While Martinez and Mendez earn \$10.60 and \$10.90 per hour, respectively, other employees' hourly pay ranges from \$7.00 to \$8.20.

possession of any one of the functions enumerated in Section 2(11) is sufficient to establish supervisory status, Section 2(11) requires that a supervisor must perform those functions with independent judgment, as opposed to in a routine or clerical manner. *Bay Area-Los Angeles Express*, above at 1073 and cases cited therein. The burden of proving supervisory status rests on the party contending that status. *NLRB v. Kentucky River*, 532 U.S. 706 (2001); *Midland Transportation Co.*, 304 NLRB 4 (1991); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). Absent detailed, specific evidence of independent judgment, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992)(citing *Sears Roebuck & Co.*, 304 NLRB 193 (1991)). Further, whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established on the basis of those indicia. *The Door*, 297 NLRB 601 (1990) (quoting *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)). It is well established that an employee's title, standing alone, is not indicative of supervisory status for purposes of the Act. *John N. Hansen Co.*, 293 NLRB 63 (1989); *Waterbed World*, 286 NLRB 425 (1987). The Board in *Providence Hospital* quoted with approval the court in *NLRB v. Security Guard Service*, 384 F. 2d 143, 151(5th Cir. 1967):

If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.

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Based upon the above and the record as a whole, noting that team leaders share similar terms and conditions of employment as other unit employees and the absence of evidence that they have the independent authority as defined in Section 2(11) of the Act, I find that they do not possess any indicia of supervisory status that would warrant their exclusion from the unit. *Spector Freight System, Inc.*, 216 NLRB 551 (1975); *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995); see also *Browning Ferris, Inc.* 275 NLRB 292(1985).

The Intervenor can point to little direct evidence to support its assertion that team leaders are statutory supervisors. In this regard, it asserts that Martinez is a supervisor because she assigns work. This assertion appears to be based solely on the testimony of Elvin Perez that when he arrives at work, Martinez gives him his assignment. However, there is no indication in the record that Martinez exercises independent judgment in so doing, rather than merely conveying the assignments made by management, as she does for the rest of the employees.

The Intervenor would have the Region define Martinez as a supervisor based on certain secondary indicia of supervisor status present in the record. These include Martinez's enhanced salary, her having keys to the office, her meeting with management to receive instructions and the absence of an admitted supervisor for periods of her shift. While these factors might tip the scales in a close question of supervisor status, where as here there is a total absence of any primary indicia of supervisor status, these secondary indicia do not suffice.

It is the Intervenor's burden to prove that the team leaders are supervisors as defined by the Act and I find that the Intervenor has failed to meet this burden. I

therefore conclude that the team leaders are not supervisors and, therefore, they will be included in the appropriate unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective



bargaining purposes by **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32B-32J, AFL-CIO.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, **three (3)** copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **June 16, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **June 23, 2003**.

Signed at Newark, New Jersey this 9<sup>th</sup> day of June, 2003.

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Gary T. Kendellen, Regional Director  
NLRB Region 22  
20 Washington Place  
Fifth Floor  
Newark, New Jersey 07102

177-8501 et seq.  
177-8560